

ORIGINAL
DOCKET FILE COPY ORIGINAL

RECEIVED

NOV - 4 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	MM Docket No. 90-323
)	
HS COMMUNICATIONS, INC.)	File No. BPH-880505MZ
)	
STACY C. BRODY)	File No. BPH-880505NO
)	
CRAIG L. SIEBERT)	File No. BPH-880505PM
)	
For Construction Permit for a New)	
FM Station on Channel 271A)	
Virginia Beach, Virginia)	
)	
TO: The Commission		

JOINT PETITION FOR RECONSIDERATION

Pursuant to Section 405 of the Communications Act, as amended, 47 U.S.C. Section 405 and Section 1.106 of the Commission's Rules, Stacy C. Brody ("Brody") and HS Communications, Inc. ("HS"), by their respective attorneys, hereby respectfully request the Commission to set aside the action taken by the General Counsel, under delegated authority, dated October 7, 1998, approving settlement agreements in this proceeding and granting the application of Craig L. Siebert ("Siebert") for a construction permit for a new FM broadcast station at Virginia Beach, Virginia. In support thereof, it is alleged:

1. On January 18, 1998, and January 30, 1998, settlement agreements were entered into between Siebert and Brody and Siebert and HS. These agreements provided, in substance, for

No. of Copies rec'd 0216
List A B C D E

the payment of a sum of money by Siebert to Brody and for the payment of another sum of money by Siebert to HS, all in exchange for the voluntary dismissal of the HS and Brody applications. The settlement agreements further provided for a grant of the application of Siebert.

2. Effective as of February 1, 1998, amendments were executed to each of the settlement agreements. The Brody amendment contained the following language:

"No later than fifteen (15) days after public notice, as that term is defined in the FCC Rules, of the grant of the Joint Request, Siebert shall deposit the amount of the Settlement Payment, minus the amount of the Deposit, in escrow at an account to be established at Riggs Bank, N.A., Washington, D.C., with Lauren A. Colby and Stephen Diaz Gavin as Joint Escrow Agents (such deposit hereinafter the Escrow Deposit)". In the event that Siebert fails to make the Escrow Deposit within the time set forth in this paragraph, provided that Brody is not otherwise in breach of this Agreement, Siebert agrees to waive opposition to any request for reconsideration or application for review filed by Brody premised on Siebert's failure to make the Escrow Deposit. At Closing, the Escrow Agents shall disburse to Brody the amount of the Settlement Payment, less the Deposit". (Emphasis added.)

The corresponding language in the HS amendment reads as follows:

"No later than fifteen (15) days after public notice, as that term is defined in the FCC Rules, of the grant of the Joint Request, Siebert shall deposit the amount of the Settlement Payment, less the Deposit, in escrow at an account to be established at Riggs Bank, N.A., Washington, D.C., with Barry A. Friedman and Stephen Diaz Gavin as Joint Escrow Agents (such deposit hereinafter the "Escrow Deposit"). The Escrow Agents shall disburse the Settlement Payment, less the Deposit, to HS as provided in Section 1 of the Agreement. In the event that Siebert fails to make the Escrow Deposit within the time set forth in this paragraph, provided that HS is not otherwise in breach of this Agreement, Siebert agrees to waive opposition to any request for reconsideration or application for review filed by HS premised on Siebert's failure to make the Escrow Deposit." (Emphasis added.)

Thus, both agreements, as amended, required Siebert to post certain monies in escrow no later than

15 days after FCC public notice of the approval of the settlement agreements and grant of his application, or be subjected to reconsideration of the grant.

3. On October 7, 1998, the Assistant General Counsel issued an Order approving the settlements and granting Siebert's application. Pursuant to established Commission precedent, that Order constitutes "public notice". Letter to Lewis J. Paper, Esquire, 11 FCC Rcd 5380 (OGC 1996). Siebert, however, did not post the required escrow monies within the time provided for. Therefore, on October 26, 1998, counsel for Brody and HS wrote a letter to counsel for Siebert, putting Siebert on notice that he had defaulted under the terms of the settlement agreements and requesting that he comply therewith. A copy of that letter is attached and marked Exhibit A.

4. The requirement to post the escrow monies was a condition precedent to the effectiveness of both of the settlement agreements, as amended. Indeed, Siebert specifically agreed not to oppose any request for reconsideration premised on Siebert's failure to make the escrow deposits. By this Joint Petition for Reconsideration, HS and Brody affirmatively request that, owing to Siebert's failure to comply with the settlement agreements, the grant of Siebert's application be set aside and that the parties to this proceeding be restored to the status quo ante.

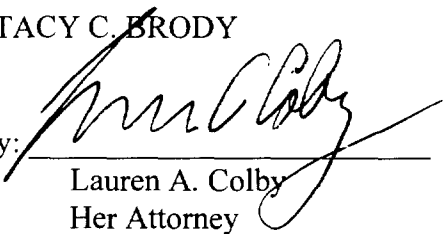
November 4, 1998

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113
(301) 663-1086

Respectfully submitted,

STACY C. BRODY

By:


Lauren A. Colby
Her Attorney

Thompson, Hine & Flory, L.L.P.
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 973-2789

HS COMMUNICATIONS, INC.

By: Barry A. Friedman
Barry A. Friedman
Its Attorney *per*
V. D. C.

EXHIBIT A

LAUREN A. COLBY
ATTORNEY AT LAW
POST OFFICE BOX 113
FREDERICK, MARYLAND 21705-0113

10 EAST FOURTH STREET
FREDERICK, MARYLAND 21701

October 26, 1998

TELEPHONE
(301) 663-1066
TELECOPIER
(301) 695-8734

VIA FACSIMILE/FIRST CLASS MAIL

Stephen Diaz Gavin, Esq.
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037

Dear Steve:

I am writing to you in my capacity as counsel to Stacy C. Brody. Mr. Barry A. Friedman joins in this letter in his capacity as counsel to HS Communications, Inc.

On January 18, 1998, and January 30, 1998, Stacy C. Brody and HS Communications, Inc., respectively, entered into settlement agreements with your client, Craig L. Siebert, providing, in substance, for the dismissal of the Brody and HS Communications Applications; a grant of Siebert's application; and a payment of sums of money by Siebert to Brody and HS Communications. Under the terms of the settlement agreements, as subsequently amended, the sums of money to be paid by Mr. Siebert are to be placed in escrow at the Riggs Bank, N.A., Washington, D.C.:

"No later than fifteen (15) days after public notice, as that term is defined in the FCC Rules, of the grant of the Joint Request [for Approval of Settlement Agreements]."

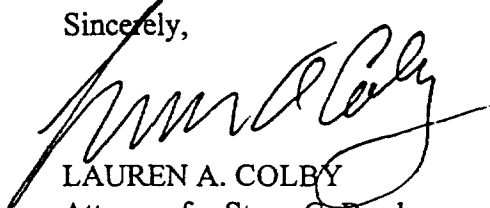
On October 7, 1998, the Assistant General Counsel of the FCC released an Order, granting the Joint Request. The Commission has ruled that the issuance of an order, adopted by the General Counsel, approving a settlement, constitutes "public notice" of such approval. Letter to Lewis J. Paper, Esquire, 11 FCC Rcd 5380 (OGC, 1996). That being so, and under the terms of the settlement agreements, as amended, your client should have posted the required monies in escrow, no later than October 22, 1998. Your client did not do so. Therefore, your client is in default.

Mr. Gavin
October 26, 1998
page 2

The purpose of this letter is to respectfully request that your client cure the default, immediately, by placing the required funds in escrow.

For your convenience, a copy of the letter in Lewis J. Paper is enclosed.

Sincerely,



LAUREN A. COLBY
Attorney for Stacy C. Brody



BARRY A. FRIEDMAN
Attorney for HS Communications, Inc.

LAC/tdm

cc: Mrs. Stacy C. Brody

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 11, 1996

Released: March 11, 1996

Lewis J. Paper, Esq.
Dickstein, Shapiro & Morin
2101 L Street, N.W.
Washington, D.C. 20037-1526

Dear Mr. Paper:

This is in response to your letter dated March 6, 1996, in which you request clarification as to the date of "public notice" for orders adopted by the General Counsel under delegated authority which dispose of joint requests for approval of settlement agreements filed pursuant to 47 C.F.R. § 73.3525.

You are correct that, pursuant to 47 C.F.R. § 1.4(b)(5), the "release date" specified on such a document is the date of "public notice" to be used for any computation of time to be carried out with respect to that ruling, whether or not the full text is made available, pursuant to 47 C.F.R. § 1.4(b)(2), to the press and public in the Commission's Office of Public Affairs.

Sincerely,

John I. Riffer
Assistant General Counsel
Administrative Law Division
Office of General Counsel

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 4th day of November, 1998, to the offices of the following:

*Christopher J. Wright
General Counsel
F.C.C.
1919 M Street, N.W.
Room 614
Washington, D.C. 20554

Stephen Diaz Gavin, Esq.
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037


Traci Maust

*By Hand/Mail.